

alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part. The duration of such training may not be less than 3 hours.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this part. For purposes of this paragraph (h), all urine from a void constitutes a single specimen.

(i) A railroad required or authorized to conduct testing under this part may conduct all such testing in the United States. A foreign railroad required to conduct testing under this part may conduct such tests in its home country, provided that it otherwise complies with the requirements of this part.

[66 FR 41973, Aug. 9, 2001, as amended at 69 FR 19288, Apr. 12, 2004]

#### § 219.13 Preemptive effect.

(a) Under section 20106 of title 49, United States Code, issuance of the regulations in this part preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of the regulations in this part to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

#### § 219.15 [Reserved]

#### § 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

#### § 219.19 [Reserved]

#### § 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130-0526.

(b) The information collection requirements are found in the following sections: 219.7, 219.23, 219.104, 219.201, 219.203, 219.205, 219.207, 219.209, 219.211, 219.213, 219.303, 219.401, 219.403, 219.405, 219.407, 219.501, 219.502, 219.503, 219.601, 219.605, 219.701, 219.801, 219.803, 219.901, and 219.903.

#### § 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations. Use of the mandated DOT form for drug or alcohol testing satisfies the requirements of this paragraph (a).

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph (b). Use of the DOT form for non-Federal tests is prohibited.